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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 || JOHN SHEK,

8 || Plaintiff(s),

No. C 11-1968 PJH

9

ORDER OF DISMISSAL

10 CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Defendant(s).

13 Before the court is defendant's motion to dismiss plaintiff's complaint, noticed for
14 hearing on September 21, 2011. Plaintiff's responsive brief, to the extent it is
15 comprehensible, reads like an opposition to the motion to dismiss, but is entitled "Plaintiff's
16 motion to dismiss without prejudice, change of venue after failed attempt for requesting
17 recusal of Judge Phyllis J. Hamilton for bias." In the body of the brief, plaintiff requests the
18 court to dismiss the case without prejudice for change of venue. While it is not clear what
19 plaintiff intends by the use of the words "for change of venue," the law is clear that plaintiff
20 has a right to dismiss his own case without a court order before an answer or motion for
21 summary judgment is filed pursuant to Fed. R. Civ. P. 41(a)(1). Accordingly, as neither an
22 answer nor motion for summary judgment has been filed, and given that plaintiff could have
23 simply filed a notice of voluntary dismissal, the court GRANTS plaintiff's request and
24 DISMISSES this case without prejudice. The clerk shall close the file.

IT IS SO ORDERED.

Dated: September 9, 2011


PHYLLIS J. HAMILTON
United States District Judge